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No. 83-715

IN THE

Supreme Court of the United States

October Term, 1983

RIO VISTA NON-PROFIT HOUSING CORPORATION,

Appellant,

against

COUNTY OF RAMSEY,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS

THOMAS FOLEY
Ramsey County Attorney
STEVEN C. DeCOSTER
Assistant County Attorney
200 Lowry Square
Saint Paul, MN 55102
Telephone: (612) 298-4330

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
C. H. LUTHER
Deputy Attorney General
Department of Revenue
Centennial Office Building
Saint Paul, MN 55145
Telephone: (612) 296-3421
Attorneys for Appellee

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

QUESTION PRESENTED

Whether Minn. Stat. § 272.02, subd. 1(6) (1982) (Minn. Laws 1980, ch. 607, art. II, § 6), which taxes at a reduced assessment rate those structures owned by certain types of charitable institutions (government-subsidized low-and-moderate-income housing), is constitutional under the equal protection and supremacy clauses of the United States Constitution.

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MOTION TO DISMISS

Appellee hereby moves the Court to dismiss the appeal herein on the grounds that the question presented is so insubstantial as not to require further argument.

OPINION BELOW

The opinion of the Minnesota Supreme Court is reported at 335 N.W.2d 242, and reproduced in Appellant's Jurisdictional Statement at A-1 through A-19.[1]

[1] Further references to the Jurisdictional Statement will use the abbreviation "Jur. Stat.".

FEDERAL CONSTITUTIONAL PROVISIONS

The supremacy clause of the United States Constitution (art. VI, cl. 2) provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

The equal protection clause of the United States Constitution (amend. XIV, § 1) provides in part:

> . . . nor [shall any state] deny to any person within its jurisdiction the equal protection of the laws.

THE MINNESOTA CONSTITUTIONAL PROVISION AND MINNESOTA STATUTES

Minn. Const. art. X, § 1, provides in relevant part:

> Section 1. *Power of Taxation; exemptions; legislative powers* . . . Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but . . . institutions of purely public charity . . . shall be exempt from taxation except as provided in this section . . . . The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

Minn. Stat. § 272.02, subd. 1(6) (1982), provides in relevant part:

> 272.02 EXEMPT PROPERTY
>
> Subdivision 1. Except as provided in . . . subdivisions 17, 17b, 17c or 17d, all property described in this section to the extent herein limited shall be exempt from taxation:
>
> * * *
>
> (6) Institutions of purely public charity except property assessed pursuant to section 273.13, subdivisions 17, 17b, 17c or 17d.

Minn. Stat. § 273.13, subds. 17 and 17a (1982) provide in relevant part:

> Subd. 17. *Title II or state housing finance agency property used for elderly and low and moderate income families.* A *structure* situated on real property that is used for housing for the elderly or for low and moderate income families as defined by Title II of the National Housing Act or the Minnesota housing finance agency law of 1971 . . . and financed by a direct federal loan or federally insured loan or a loan made by the Minnesota housing finance agency pursuant to the provisions of either of said acts . . . shall, for 15 years from the date of the completion of the original construction or substantial rehabilitation, or for the original term of the loan, be assessed at 20 percent[2] of the market value thereof, provided that the fair market value as determined by the assessor is based on the normal approach

[2] Although the taxability of Rio Vista's land was an issue at trial, Ramsey County conceded upon appeal to the Minnesota Supreme Court that, pursuant to section 273.13, subdivision 17, only the structures owned by Rio Vista are subject to taxation.

to value using normal unrestricted rents. (Emphasis added).

Subd. 17a. The provision of subdivision 17 shall apply only to non-profit and limited dividend entries.

STATEMENT OF THE CASE

This is a direct appeal from the decision of the Minnesota Supreme Court upholding the constitutionality of Minn. Stat. § 272.02, subd. 1(6) (1982) (Minn. Laws 1980, ch. 607, art. II, § 6). This law imposes a tax upon appellant's real property at a reduced (20%) assessment rate.[3] It was enacted following the decision of the Minnesota Supreme Court that appellant (hereinafter "Rio Vista") was an institution of purely public charity pursuant to Minn. Stat. § 272.02, subd. 1(6) (1978), and, therefore, exempt from property taxation under the laws existing prior to the enactment of the challenged statute. *Rio Vista Non-Profit Housing Corporation v. County of Ramsey*, —— Minn. ——, 277 N.W.2d 187 (1979).[4]

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[3] Non-subsidized rental housing containing four or more units is assessed at 34% of market value. Minn. Stat. § 273.13, subd. 19 (1982).

[4] Prior to the 1979 *Rio Vista* decision, appellant's property had been taxed at the same 20% assessment rate under the provisions of Minn. Stat. § 273.13, subds. 17 and 17a (1978). It is significant that the Minnesota legislature, since 1973, has expressly indicated its intention that both federal and state subsidized housing be taxed at the 20% assessment rate. Minn. Laws 1973, ch. 355, § 1, amending Minn. Stat. § 273.13, subd. 17. As the Minnesota Supreme Court noted, the 1980 amendment to section 272.02, subdivision 1(6), was made in response to the Court's holding in the 1979 *Rio Vista* case, to the effect that section 273.13, subdivision 17, a classification statute, was inoperative as a limitation on Rio Vista's exempt status, and that such a limitation should properly have been included in either section 272.02, or section 272.025. 335 N.W.2d at 244-245. Jur. Stat. at A-5-6.

Following enactment of the 1980 law, Rio Vista filed a property tax petition in the state district court pursuant to Minn. Stat. ch. 278, asserting that the law violates the supremacy and equal protection clauses of the United States Constitution, as well as the uniformity clause of the Minnesota Constitution. Minn. Const. art. X, § 1. On April 9, 1982, the district court upheld Rio Vista on all constitutional grounds. Jur. Stat. B-1 through B-25.

Ramsey County appealed from this ruling to the Minnesota Supreme Court, which reversed the district court decision by its opinion dated June 24, 1983. Jur. Stat. A-1 through A-19.

Rio Vista then filed a petition for rehearing with the Minnesota Supreme Court, which was denied by the Court in its Order dated August 10, 1983.

STATEMENT OF THE FACTS

The pertinent facts in this case were stipulated by the parties and a written stipulation of facts was filed with the trial court. These facts, somewhat abbreviated, are substantially as follows:

Rio Vista was incorporated as a non-profit corporation on May 6, 1971, and was organized to own and operate a rental housing project for families without means to obtain adequate housing.

Rio Vista owns four buildings (including the land on which the buildings are located) containing 48 rental units, of which 28 are one-bedroom units and 20 are two-bedroom units. Rio Vista conducts no activity or business other than ownership and operation of the 48 rental units.

The 48 rental units and land were acquired by Rio Vista with the proceeds from a promissory note executed on April

10, 1972, in the amount of $829,900, and secured by the land and buildings owned by Rio Vista. The loan of $829,900 is insured by the federal government under the provisions of the National Housing Act.

The rent that would be charged by Rio Vista to a tenant who is able to pay market rent is $212.00 per month for a one-bedroom unit and $275.50 per month for a two-bedroom unit. None of Rio Vista's tenants pay market rent because none of them have sufficient income or other assets to do so.

There are two federal programs which enable Rio Vista to rent its units to tenants who cannot afford to pay market rent. Under the "Section 236 Program" (12 U.S.C. § 1715z-1) the federal government pays a part of the interest cost that Rio Vista is obligated to pay on its mortgage note. Under the "Rent Supplement Program" (12 U.S.C. § 1701s) the federal government pays a part of the rent for certain tenants.

Pursuant to the Section 236 Program, Rio Vista has established for each dwelling unit (1) a basic rent determined on the basis of operating the units with payments of principal and interest under a mortgage bearing interest at 1% and (2) a market rent determined on the basis of operating the project with payments of principal, interest and mortgage insurance premiums due under the insured mortgage. The rent for each unit is equal to the basic rent or 25% of the tenant's income, whichever is greater, but in no event does the rent charged exceed market rent.

The basic rent is $150 per month for one-bedroom units and $195 per month for two-bedroom units. A tenant is eligible for payment of the basic rent if his income and assets do not exceed eligibility amounts prescribed by the federal government.

Rio Vista pays to its mortgagee each month an amount equal to the principal and interest that would be owing on a mortgage bearing a 1% interest rate. The difference between that monthly amount and the monthly amount owing at the 7% interest rate which must be paid on the mortgage note executed by Rio Vista is remitted directly to the mortgagee by the federal government.

Under the Rent Supplement Program the federal government pays to Rio Vista the difference between the basic rent for the unit and one-fourth of the tenant's income as determined by the Federal Housing Commissioner, or the difference between the basic rent and any welfare allowance for housing if such allowance is larger than one-fourth of the tenant's income, except that the amount of the rent supplement payment may not, regardless of the tenant's income, exceed 70% of the basic rent for the unit. For example, assume a monthly basic rent of $150 and a tenant whose monthly income is $300 at the time of his application for a rent supplement. If approved, he will pay 25% of his income, or $75 per month, as rent, and the difference of $75 per month will be paid by the federal government as a rent supplement. There were 19 tenants at Rio Vista who were receiving rent supplements at all times relevant to this case, of whom seven were receiving the maximum amount of rent supplements.

The lease agreement between Rio Vista and its tenants provides for eviction for failure to pay rent, assessment of attorney's fees in eviction proceedings, and payment of security deposits.

Rio Vista's only sources of income in each of its years since its incorporation have been from the four sources of

rents, rent supplements, interest reduction payments, and miscellaneous income (including security deposit forfeitures).

A real estate tax of $15,863.36 was assessed in 1980, payable in 1981, against the land and structures owned by Rio Vista. The portion of the tax allocable to the structures is $14,065.36, and the amount allocable to the land is $1,798.00. As indicated previously, Ramsey County now agrees that only Rio Vista's structures are subject to taxation.

ARGUMENT

THE DECISION OF THE MINNESOTA SUPREME COURT IS PLAINLY CORRECT, AND RIO VISTA'S JURISDICTIONAL STATEMENT FAILS TO RAISE A SUBSTANTIAL FEDERAL QUESTION.

I. Taxation Of Rio Vista's Structures At A Reduced Assessment Rate Is Constitutional Under The Supremacy Clause Of The United States Constitution.

This Court has observed that the purpose of the supremacy clause is to:

> avoid the introduction of disparities, confusions and conflicts which would follow if the Government's general authority were subject to local controls.

United States v. Allegheny County, 322 U.S. 174, 183 (1944).

Clearly, there is no subjection of the federal government's authority to local control in the instant case. And just as clearly, taxation of Rio Vista's property does not conflict with, either directly or indirectly, any federal law, federal treaty, or Congressional intent. As the Minnesota Supreme Court recognized, "Congress anticipated that local property

taxes would be levied on federal housing projects." 335 N.W. 2d at 247. Jur. Stat. at A-18. The Court said further:

> *See* 12 U.S.C.A. § 1715z-1a(e)(2) (1980), requiring developers to seek assurances from local officials that property taxes will be no greater than normal for the community, and 12 U.S.C.A. § 1715z-(f)(3)(A) (repealed by Pub. L. 97-35, §§ 321(f)(3) and 322(5)(7)) and (g), providing for an operating subsidy fund to aid troubled developers faced with increased taxes and maintenance costs.

335 N.W.2d at 247, n.6; Jur. Stat. at A-18.

In addition, House Report No. 1585 of the Housing and Urban Development Act of 1968 states in part:

> The committee commends those states which now provide tax abatement and hopes that states and municipalities will exercise restraint in assessing these types of properties [Title II properties such as Rio Vista] and to provide, where possible, for tax abatement and other tax reduction methods which recognize the important purpose of these programs.

H.R. No. 1585, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. and Ad. News 3083, 3084.

Thus the applicable federal law contemplates local taxation of Title II subsidized housing, and Rio Vista has no valid claim that taxation of its structures at a favorable assessment rate conflicts with this law or otherwise interferes with the function of the federal government.

In a relatively recent decision this Court reviewed the evolution of its holdings in supremacy clause cases. The Court said:

> For many years the Court read the decision in *McCulloch*[5] as forbidding taxes on those who had contractual relationships with the Federal Government or with its instrumentalities whenever the effect of the tax was or might be to increase the cost to the Federal Government of performing its functions. In later years, however, the Court departed from this interpretation of *McCulloch*. In *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155 (1937), a contractor sought immunity from a state occupation tax measured by the gross receipts, insofar as those receipts had been received under a contract with the Federal Government. The Court declared the tax valid even if "the gross receipts tax may increase the cost to the Government" under the contract. *Id.*, at 160, 58 S.Ct., at 221. So long as the tax is not directly laid on the Federal Government, it is valid if nondiscriminatory, *id.*, at 150, 58 S.Ct., at 216, or until Congress declares otherwise. *Id.*, at 161, 58 S.Ct., at 221.
>
> . . . .
>
> The rule to be derived from the Court's more recent decisions, then, is that the economic burden on a federal function of a state tax imposed on those who deal with the Federal Government does not render the tax unconstitutional *so long as the tax is imposed equally on the other similarly situated constituents of the State.*

United States v. County of Fresno, 429 U.S. 452, 460 (1977) (footnotes omitted, emphasis added).

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[5] *McCulloch v. Maryland*, 4 Wheat. 316, 4 L.Ed. 579 (1819).

In the instant case, the tax complained of applies equally to all similarly-situated properties, that is, to all properties covered by the section 273.13, subdivision 17, classification, including properties subsidized under the Minnesota Housing Finance Agency Law of 1971. Minn. Stat. § 462A.01-24 (1982). The law does not violate the supremacy clause because it in no way discriminates against persons doing business with the federal government, as compared with persons doing business with the State of Minnesota. When the parties in the courts below stipulated that the tax was imposed on "appellant and organizations like appellant" the intent was to include organizations offering housing subsidized by both the state and federal governments.

Rio Vista concedes, as it must, that the 1980 law is nondiscriminatory by its very terms, but contends that it is discriminatory in effect because "there are no state-subsidized institutions of purely public charity." Jur. Stat. at 25-26. This statement is misleading because the record is silent as to the existence or non-existence of state-subsidized charitable housing, and the Minnesota Supreme Court, in reversing the lower court decision in favor of Rio Vista, correctly observed that:

> [T]he trial court, in looking beyond the express terms of the statute, placed the burden of proving the existence of state-subsidized housing on appellant. The challenger, not the state, has the burden of proof of constitutional violation beyond a reasonable doubt. *Federal Distillers, Inc. v. State*, 304 Minn. 28, 39, 229 N.W.2d 144, 154 (1975), *appeal dismissed*, 423 U.S. 908, 965 Ct. 209, 46 L.Ed.2d 137 (1975). Respondent has not proved beyond a reasonable doubt that the statute, which is

> nondiscriminatory by its very terms, is discriminatory in effect.

335 N.W.2d at 247; Jur. Stat. at A-17-18.

There is no question that the tax is imposed equally on both federal and state-subsidized housing. It is, therefore, not the type of discriminatory law which was struck down in *Moses Lake Homes, Inc. v. Grant County*, 365 U.S. 744 (1961), or *Phillips Chemical Co. v. Dumas Independent School District*, 361 U.S. 376 (1960). Rio Vista, however, relying solely upon the decision in *United States v. State of Tennessee*, —— F.2d —— (6th Cir., March 28, 1983), affirming 531 F. Supp. 62 (E.D. Tenn. 1981), asserts that the law violates the supremacy clause because the tax it imposes is "directed against appellant." Jur. Stat. at 31.

Rio Vista's reliance on the *State of Tennessee* decision is misplaced. The Sixth Circuit held that the state, by levying a tax on producers of enriched uranium, had directly taxed a function of the federal government in violation of the supremacy clause. The Court reasoned that, while Union Carbide personnel operated the Oak Ridge facility for a fee, the uranium production plant was owned by the United States which set production decisions regarding the quantity and quality to be produced and sold the product to foreign and domestic customers. All three such facilities in the United States were operated in a like manner. Jur. Stat. G-1 through G-6.

Thus, the appellate court affirmance did not depend upon a finding of discrimination against a federal contractor, the proposition for which Rio Vista has cited it. Rather, the tax on the Oak Ridge facility was held to be invalid as a direct state tax on the United States. In addition, Rio Vista has failed to show that the tax in the instant case was "directed

at" its housing project alone, or, for that matter, at federally subsidized housing as a class. Since 1973, the tax has been imposed equally upon both state and federally subsidized housing.

As the Minnesota Supreme Court also recognized, Congress expressly contemplated that Title II subsidized housing projects, such as Rio Vista, would bear at least some share of the local property tax burden. 335 N.W.2d at 247. Thus, taxation of Rio Vista's structures at a reduced assessment rate can hardly be claimed to conflict with the intent of Congress or otherwise interfere with the function of the federal government. To the contrary, such taxation is in conformity with the expressed understanding and intention of Congress—a compelling fact which Rio Vista does not address in its Jurisdictional Statement.

Instead, Rio Vista attempts to argue that the tax will impede congressional interests by increasing the costs of housing. Quoting from a HUD letter which is not of record herein, Rio Vista theorizes that taxation of 97 HUD projects in Minnesota involves about "$2,300,000 of taxes." Jur. Stat. at 32. This figure represents nothing more than uninformed speculation on the part of appellant, which, in turn, is based on a document not in evidence. Further, as will be discussed again later in this motion, Rio Vista has demonstrated no grounds whatever for its assertion that the burden of the property tax falls upon its tenants, and that the decision of the Minnesota Supreme Court, if affirmed, "will impede in a substantial way the ability of the federal government to provide decent housing for such tenants." Jur. Stat. at 33.

The Minnesota Supreme Court has correctly held that Rio Vista has failed to carry its burden of proving, beyond a reasonable doubt, that taxation of its property violates the supremacy clause, either by its express terms or in its effect.

II. Taxation Of Rio Vista's Structures At A Reduced Assessment Rate Is Constitutional Under The Equal Protection Clause Of The United States Constitution.

A. Standards to be Applied in Equal Protection Cases Involving Tax Statutes.

This Court has recently reaffirmed the breadth of power possessed by state legislatures in establishing tax classifications:

> Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. More than 40 years ago we addressed these comments to an equal protection challenge to tax legislation:
>
> > "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . . The passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons or classes. The burden is on the

> one attacking the legislative arrangement to negative every conceivable basis which might support it." *Madden v. Kentucky*, 209 U.S. 83, 87-88, 84 L.Ed. 590, 60 S.Ct. 406 (1940) (footnotes omitted).

Regan v. Taxation With Representation, 103 S.Ct. 1997, 2002 (1983) (citations omitted). *See also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981), holding that a business classification statute will be sustained if the classification is even arguably related to a legitimate government purpose.

Thus, before this Court Rio Vista must establish that the Minnesota legislature has exceeded its broad and flexible powers in the area of tax classifications, and that the challenged statute is clearly arbitrary, having no conceivable rational basis for its enactment. It is clear that no substantial argument can be made in support of such a contention.

B. There Is A Rational Basis For Classifying Rio Vista's Property Differently From The Property Of Privately-Supported Charitable Institutions.

To successfully challenge the tax law under attack, Rio Vista must establish that no conceivable reason exists for the classification the law creates. It is apparent, however, that the Minnesota legislature sought to extend limited benefits to subsidized housing programs because of specific attributes they possess. Among these attributes is the obviously large support they already receive from government sources, as well as the nature of other income they receive. The Minnesota legislature, recognizing and taking into consideration the differences between government-subsidized housing and

those charities which are privately supported, has determined that tax reduction, rather than complete exemption, is an appropriate measure of assistance by the State. Under the National Housing Act, Rio Vista has received sustained financial support from the federal government during the years 1974 through 1980, ranging from 41 percent to 49 percent of its total annual income. Stip. of Facts, Par. 8 and Exh. B. While it is true, as Rio Vista argues, that other charitable institutions receive some government aid, there is no evidence that such aid approaches the magnitude or continuity of the assistance provided Title II housing under the mortgage and rent subsidy programs established by Congress.

In the 1979 *Rio Vista* decision the Minnesota Supreme Court observed that:

> Without a doubt, the very existence of Rio Vista can be attributed to support from the Federal Government because the government guaranteed and funded in part the low-interest construction loan and it also provides a significant rent assistance.

Rio Vista Non-Profit Housing Corporation v. County of Ramsey, 277 N.W.2d at 190.

And in the Rio Vista decision on appeal herein, the Court stated:

> The distinction that separates subsidized low-income housing from other purely public charities is perceived by both parties to be the fact that subsidized housing receives all its support from public funds and tenants' rents, while other charities are supported in whole or in part by private donations. The legislature has no obligation to, and did not, state its purpose in providing reduced property tax rates for subsidized housing while

> completely exempting other charities. Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 528, 79 S.Ct. 437, 441, 3 L.Ed.2d 480 (1959). Various purposes can be attributed to the legislature. The legislation will be sustained as having a rational basis if any conceivable state of facts supports it. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 509, 57 S.Ct. 868, 872, 81 L.Ed. 1245 (1937).

335 N.W.2d at 245-246; Jur. Stat. at A-9-10.

Exhibit B to the stipulation of facts highlights the differences between Rio Vista and privately supported charities, showing that its income is derived totally from federal subsidies, tenants' rent payments, and "miscellaneous," with no income whatever coming from private charitable donations. While the Minnesota Supreme Court held that the absence of private support does not disqualify Rio Vista as a charitable institution (277 N.W.2d at 190-191), it is a substantial distinction which supports the legislative limitation of the tax exemption as authorized by the Minnesota Constitution.[6]

In *Regan v. Taxation With Representation*, 103 S.Ct. 1997 (May 23, 1983), this Court held that it was not a violation of equal protection for Congress to deny to charities the use of tax deductible contributions to support substantial lobbying activities, while permitting such use by veterans' organizations. With respect to the scope of legislative discretion, the Court said:

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[6] Minn. Const. art. X, § 1, establishes legislative authority to "define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes."

> We have no doubt but that this statute is within Congress' broad power in this area. TWR [Taxation With Representation] contends that § 501(c)(3) organizations could better advance their charitable purposes if they were permitted to engage in substantial lobbying. This may well be true. But Congress—not TWR or this Court—has the authority to determine whether the advantage the public would receive from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying, and other disadvantages that might accompany that lobbying. * * * It is not irrational for Congress to decide that tax exempt charities such as TWR should not further benefit at the expense of taxpayers at large by obtaining a further subsidy for lobbying.

103 S.Ct. at 2003.

Likewise in the instant case, it is not irrational for the Minnesota legislature to withhold from government-supported charitable housing the additional subsidy of complete tax exemption, while providing that subsidy to privately supported charitable institutions.

Rio Vista asserts, however, that "if the tax is upheld, the burden of the tax will fall upon the tenants." Jur. Stat. at 38. While this assertion is of doubtful constitutional significance, a review of the applicable federal statutes does not, in any event, support its accuracy.

12 U.S.C.A. § 1715z-1(f)(1) provides in substance that the "basic rents" and "market rents" for low-and-moderate-income housing, such as Rio Vista, are determined solely by the financing arrangements for the project. *See* Stip. of Facts,

par. 9. Thus it is clear that the imposition of *ad valorem* taxes on Rio Vista's structures has no effect on the amount of rent charged its tenants.

Furthermore, 12 U.S.C.A. § 1715z-1a(f)(1) provides, *inter alia*, that the federal government may render additional financial assistance to a project if the project's estimated operating expenses (including, but not limited to, taxes, utilities, and maintenance and repairs), exceeds its estimated revenues (including, but not limited to, rents paid by tenants, rental assistance paid by the federal government, and interest reduction payments made by the federal government). 12 U.S.C.A. § 1715z-1a(f)(1)(C).

It is thus apparent that the amount of federal financial assistance may vary with the amount of local real estate taxes, as well as with other expenses, paid by Rio Vista. It is equally apparent that the rents paid by individual tenants are, and will remain, unaffected by the taxation of Rio Vista's property.

Rio Vista next takes issue with the Minnesota Supreme Court's characterization of its operation as commercial in nature. Jur. Stat. at 39-42. The Court said:

> The legislative classification for tax purposes based on a distinction between government-supported charities with operations of a commercial nature and privately supported charitable institutions is not arbitrary and is reasonably grounded.

335 N.W.2d at 246; Jur. Stat. at A-12.

And in its 1979 decision holding that Rio Vista qualified as a charitable institution under Minnesota law, the Court observed that:

> The situation at Rio Vista cannot be distinguished easily from these cases [denying charitable exemptions]. The monthly basic rents presently charged at Rio Vista are $125 for a 1-bedroom unit and $165 for a 2-bedroom unit, plus electricity. The commercial nature of the operation is also reflected in the fact that a tenant may be evicted for failure to pay rent. Further, the exhibits indicate that rents [including rent-subsidy payments] cover approximately 77 percent of the total operating costs at Rio Vista.

Rio Vista Non-Profit Housing Corporation v. County of Ramsey, 277 N.W.2d at 191. *See also* Stip. of Facts, Exh. H.

Also consistent with the "commercial nature" of Rio Vista's operation is the fact that security deposits are required of its tenants. Stip. of Facts, Exh. H. And included as part of Rio Vista's miscellaneous income are "security deposit forfeitures." Stip. of Facts, Exh. B.

The classification established by the Minnesota legislature in the instant case is supported by longstanding federal case law applying the "reasonable basis" test. For example, in *Citizens' Telephone Co. v. Fuller*, 229 U.S. 322, 331 (1913), this Court said:

> Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they *need not be great or conspicuous*. The state is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in "clear and hostile discriminations between particular persons and classes." Thus defined and thus limited, it is a vital principle, giving to government freedom to meet its exigencies, not binding its ac-

> tion by rigid formulas, but apportioning its burdens, and permitting it to make those "discriminations which the best interests of society require." (Citations omitted, emphasis added.)

The rationale underlying separate classifications as between privately supported and government-supported charities was concisely expressed in *United States v. Department of Revenue of State of Ill.*, 202 F. Supp. 757, 759 (N.D. Ill. 1962), *aff'd. per curiam*, 371 U.S. 21 (1962), where the Court sustained the constitutionality of a statute exempting from an occupation tax retailers selling to charities, schools, and churches, but not exempting from the tax retailers selling to either the state or the federal government. The Court said:

> While charitable and educational objectives can, and are, performed through government units, the revenue to support them is derived from the power and authority of the government to tax its citizens for the public welfare. But no compulsory process exists to exact contributions to non-governmental organizations dedicated to the moral, spiritual and physical well-being of mankind. The financial resources to accomplish their objectives are derived from the concept of giving voluntarily—without legal obligation or compulsion. This difference forms a reasonable basis for a separate classification and the exemption, therefore, does not discriminate against governmental bodies.

This reasoning validates a distinction for tax purposes between persons doing business with either the state or the federal government, and persons doing business with privately supported charities. By analogy, there is a reasonable basis

for drawing a distinction between government-supported and privately supported charitable institutions, notwithstanding that those institutions may be functionally similar in other respects.

Finally, the reason for establishing the classification under attack was to provide a measure of property tax relief for government-subsidized housing which already received significant and unique governmental benefits, irrespective of what level of government provided those benefits. The purpose of the classification therefore negatives any intention to discriminate against persons doing business with any level of government.

C. Taxation Of Rio Vista's Property, While Exempting From Taxation The Property Of Privately Supported Charities, Does Not Create An Unconstitutional Disparity In Treatment In Violation Of The Equal Protection Clause.

Rio Vista argues that the decision of the Minnesota Supreme Court is in error because it sustains a classification "that taxes only appellant and organizations like it and not other institutions of purely public charity which are not distinguishable in any relevant respect from appellant." Jur. Stat. at 46-47.

As support for this argument, Rio Vista cites only the case of *Assembly Homes v. Yellow Medicine County*, 273 Minn. 197, 140 N.W.2d 336 (1966), asserting that *Assembly Homes* is indistinguishable from Rio Vista. A careful reading of that decision reveals that such is not the case.

In *Assembly Homes* the Minnesota Supreme Court granted a charitable exemption from property taxes to a nursing home

which was open to the public, operated without a view to profit, and supported and maintained in part by private donations. 273 Minn. at 204, 140 N.W.2d at 341. Unlike Rio Vista, Assembly Homes provided nursing care to elderly persons, the majority of whom apparently were indigent. In contrast, Rio Vista provides housing at established rental fees to low-and-moderate-income families, under federal programs which directly subsidize Rio Vista on a continuing contractual basis. There is no evidence that these rental fees have ever been waived or reduced based on the need of individual tenants. Moreover, Rio Vista receives 100 percent of its financial support from tenants' rents and government subsidies, with no support whatever from private donations. In short, the relevant facts in *Assembly Homes* are in no way comparable to those in the instant case. As the Minnesota Supreme Court observed with specific reference to *Assembly Homes*:

> Rio Vista's charitable purpose is to offer permanent, low-cost, subsidized housing to low-and-moderate-income families for a specified rent payment and security deposit. The charities cited by the trial court as receiving governmental support as well as total exemption from state taxation offer services without regard to the financial circumstances of the recipients and are supported and maintained in part by private donations.

335 N.W.2d at 246 (citations omitted); Jur. Stat. at A-11.

And the Court further recognized the legitimacy of requiring government-subsidized housing to bear at least some measure of the public tax burden:

> The state has the right to equalize the tax burden to offset tax-related advantages enjoyed by one group over another. United States v. County of Fresno, 429 U.S. 452,

97 S.Ct. 699, 50 L.Ed.2d 683 (1977). A more even distribution of tax burdens on those permanent residents benefiting from local services at the same time they are enjoying substantial government subsidies is relevant to the revenue-raising purpose of any tax statute. This purpose is consistent with the definition of a tax classification as "a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden." Madden v. Kentucky, 309 U.S. 83, 88, 60 S.Ct. 406, 408, 84 L.Ed. 590 (1940). The abated rate of tax is a recognition that the legislature wished to provide some measure of relief.

335 N.W.2d at 246; Jur. Stat. at A-13-14.

CONCLUSION

Taxation of Rio Vista's property at the favorable assessment rate of 20% violates neither the supremacy clause nor the equal protection clause of the United States Constitution. The law applies equally to both state and federally subsidized low-and-moderate-income housing, and there is at the very least an arguably rational basis for the legislative distinction drawn between such housing and privately supported charities which are granted complete tax exemption.

Rio Vista's Jurisdictional Statement fails to raise substantial questions of law, and we respectfully request the Court to grant Ramsey County's motion to dismiss this appeal.

Respectfully submitted,

THOMAS FOLEY
Ramsey County Attorney
STEVEN C. DeCOSTER
Assistant County Attorney
200 Lowry Square
Saint Paul, Minnesota 55102
Telephone: (612) 298-4330

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
C. H. LUTHER
Deputy Attorney General
Department of Revenue
Centennial Office Building
Saint Paul, Minnesota 55145
Telephone: (612) 296-3421
Attorneys for Appellee